Appendix A

(Statutory Provisions Involved)

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT: SECTIONS 101(a)(2) AND 102

The pertinent provisions of the Labor-Management Reporting and Disclosure Act, 73 Stat. 523, 29 U.S.C. §§ 411 et seq., are as follows:

Section 101(a)(2), 29 U.S.C. § 411(a)(2), provides:

> "(2) FREEDOM OF SPEECH AND ASSEMBLY.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

Section 102, 29 U.S.C. § 412, provides:

> "Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

Appendix B

(Court of Appeals Opinion)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 615—September Term, 1971.

(Argued April 7, 1972 Decided June 22, 1972.)

Docket No. 72-1003

JOHN J. COLE,

Plaintiff-Appellee,

v.

PAUL HALL, individually and as President or AL KERR, as Secretary-Treasurer, or EARL SHEPARD, as Vice-President, or CAL TANNER, as Executive Vice-President of SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA—ATLANTIC, GULF, LAKES AND INLAND WATERS DISTRICT,

Defendants-Appellants.

Before:

CLARK, *Associate Justice*,*

LUMBARD, *Circuit Judge*, and TYLER, *District Judge*.**

Appeal from an order of the Eastern District of New York, Jacob Mishler, *CJ*, granting Appellee reinstatement in Appellant union and attorneys' fees.

Affirmed.

---

* United States Supreme Court, Retired, sitting by designation.

** United States District Court for the Southern District of New York, sitting by designation.

Appendix B

BURTON H. HALL, 401 Broadway, New York, *for Plaintiff-Appellee.*

SCHULMAN, ABARBANEL, PERKEL & McEVOY, New York (Howard Schulman, of Counsel), *for Defendants-Appellants.*

MR. JUSTICE CLARK:

This case was here during the September Term, 1964, on an appeal from an order enjoining the defendants pendente lite from excluding appellee, John J. Cole, from membership in the Seafarers International Union of North America. *Cole* v. *Hall*, 339 F. 2d 881 (1965). In a unanimous opinion by Chief Judge Lumbard, the panel [Lumbard, *CJ.*, Hays and Marshall, *Circuit Judges*] affirmed the judgment of the District Court restoring Cole to union membership after he had been expelled in violation of his rights under § 101 (a) of the Labor-Management Reporting and Disclosure Act [1] of 1959, 29 U.S.C. § 411 (a). Judge Dooling had entered the temporary order in the District Court on the basis that the defendants had in-

---

[1] § 411.(a)(2). Freedom of speech and assembly.

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings; Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

fringed Cole's rights under § 101 (a)(2) of the Act. In addition, he found that they had also violated § 101 (a)(5) of the Act which requires a union to give adequate notice and a fair hearing to a member before disciplining him. Five years later the case came on for trial before Judge Mishler which resulted in a judgment ordering Cole permanently reinstated to membership in the union and restored to all of the financial benefits accruing to such membership and denying Cole's damage claims but granting him counsel fees in the sum of $5500 [the amount being stipulated] against the union. The complaint was dismissed against each of the individual defendants.

1. Appellant union first asserts that the trial before Judge Mishler adduced different facts than did the hearing for a temporary injunction. However a reading of the findings clearly shows that the trial judge based the judgment against the union substantially on the same grounds upon which Judge Dooling had issued the injunction in 1964 and this court had affirmed. There was additional evidence as to "raiding" engaged in by the competing unions in which the appellant union asserted it was in a "life and death" struggle for survival and that Cole's resolution would seriously undermine its chief function i. e. gaining and retaining jobs for members. The Trial Committee of the union had found that his resolution had threatened the union as an institution by jeopardizing 200 union jobs and recommended the expulsion of Cole. It claimed that the expulsion of Cole was therefore proper under the proviso of Section 101 (a)(1) permitting a union to "adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution." However, a reading of the opinion here and the later one of Judge Mishler shows that both are based on substantially the same grounds. As this court held, Cole was not subject to expulsion even though his

resolution was held by the Trial Committee to be "malicious vilification" or for that matter, false or libelous as this court pointed out, citing *Salzhandler* v. *Caputo*, 316 F. 2d 445 (2 Cir. 1963). Moreover, the argument appellant makes now is virtually identical to that rejected in *Giordani* v. *Upholsterers International Union*, 403 F. 2d 85 (2 Cir. 1968) and *Farowitz* v. *Associated Musicians*, 330 F. 2d 999 (2 Cir. 1964). This threat was speculative at best. Moreover, even if Cole's resolution had threatened legitimate interests of the union, Congress has struck the balance of interests in favor of protecting the democratic process within unions by insuring freedom for every union member to enter into debate on union activities. Cole was merely expressing his views on current union policy and urging other members to change that policy by adopting his resolution. He urged no individual member to violate union rules or to take any action not approved by the union membership. See *Farowitz* v. *Associated Musicians, supra*, at 1002. Under these circumstances, then, it is manifestly clear that Cole's conduct was protected. "The basic concern of the statute protecting union members' right to free speech is not in the precise words said, but rather what was being talked about. If the underlying topic of conversation concerns union affairs, then arguments, questions or accusations relating thereto are protected." *Giordani* v. *Upholsterers International Union, supra*, at 89, quoting from *Nix* v. *Fulton Lodge No. 2*, 262 F. Supp. 1000, 1005 (N.D. Ga. 1967). For, "[i]f unions could discipline such speech on the ground that it weakened their power as an institution, this safeguard would be rendered entirely ephemeral and ineffectual." *Giordani, supra* at 89-90.

2. The union also challenges the award of counsel fees. The trial judge in a most comprehensive and persuasive opinion upheld this award on the authority of *Gartner* v.

Soloner, 384 F. 2d 348 (3 Cir. 1967). As he points out Section 102 of the Act [29 U.S.C. 412] is silent on the question while Section 201 [29 U.S.C. 431] and Section 501 (b) [29 U.S.C. 501 (b)] specifically provide for the discretionary award of counsel fees. However, the provisions of Section 102, entitled "Civil Enforcement" do authorize the district court to grant "such relief (including injunctions) as may be appropriate." While counsel fees are not ordinarily recoverable in the absence of statutory or contractual authority, *Fleischmann Corp.* v. *Maier Brewing Co.*, 386 U.S. 714, 717 (1967), still three Circuits have upheld the discretionary award of counsel fees in Section 102 cases.[2] There are no decisions in any of the Circuits to the contrary, although *McCraw* v. *United Association*, 341 F.2d 705 (6 Cir. 1965) is sometimes cited as so holding. However, a close examination of that case reflects that the Court of Appeals did not specifically pass on § 102 but considered instead § 431 (c). At p. 711. In *Vars* v. *Boilermakers*, 215 F. Supp. 943 (D. Conn. 1963), counsel fees were not allowed. No appeal was perfected on this point; however, this court on the appeal of the union did affirm that part of the judgment restoring membership rights. In the district courts there are some conflicts, as has been noted; however the majority, including the Southern and Eastern[3] Districts of New York, have awarded counsel fees under § 102. To us the granting of counsel fees here makes sense.

---

[2] *Burch* v. *International Association of Machinists and Aerospace Workers, AFL-CIO*, 454 F. 2d 1170 (5 Cir. 1971); *Gartner* v. *Soloner*, 384 F. 2d 348 (3 Cir. 1967); *Johnson* v. *Nelson*, 325 F. 2d 646 (8 Cir. 1963).

[3] The union points to the action of Judge Bartels in granting its motion to strike the counsel fee claim in Cole's complaint as creating a split in the Eastern District. See 35 FRD 4 E.D.N.Y. (1964). We think not. The record indicates that Judge Mishler, after speaking to Judge Bartels, granted counsel fees. In central calendar districts such situations often happen, and the final ruling is considered the law of the case. No ruling is taken as final until the final judgment is entered.

Appendix B

We start with the proposition that the Act clearly protects the right of members of labor unions "to meet and assemble freely with other members; and to express any views, arguments, or opinions, and to express at meetings of the labor organization his views . . . upon any business properly before the meeting . . ." Cole was exercising this very right and was expelled for it. This case—as well as a host of others—attests to the unions' propensity to deprive members of their rights of free speech. The Congress recognized this right as vital to the independence of the membership and the effective and fair operation of the union as the representative of its membership. When Cole brought this suit, he was not vindicating his rights of free speech alone but those of every member of the union as well. Indeed, his success in maintaining this right at union meetings inured to the benefit of union members everywhere. This action by Cole was therefore of substantial benefit to all of the members of the union. In vindicating his right, he vindicated their right. *Johnson* v. *Nelson*, 325 F. 2d 646, 653 (8 Cir. 1963). All Cole was fighting to correct and change was a policy of the union, i. e. raiding other jurisdictions, cutting daily wage rates in a price war with other unions, and the reduction in "manning scale" to gain representational power.

These benefits to the union and the labor movement would be lost in most instances without the discretionary authority in courts to grant counsel fees. Indeed, cases vindicating such rights would never be filed. This case is a typical example. It has been pending almost ten years, has been to this court twice, has consumed hundreds of hours of the court time of four trial judges, accumulated thousands of pages of motions, written interrogatories, briefs, arguments, opinions, etc. some 1200 pages of testimony, two panels of judges of this court and literally thousands of hours of counsel time. The record shows that it took six months for Cole to secure his temporary injunction, largely

because of the dilatory action of the union and its officers; seven years to get his trial and now two years to obtain the final vindication of a right not only specifically secured to him in the Act itself but fundamental to a free society as well. Had it not been for the devotion of his counsel largely on a *pro bono publico* basis, Cole would not have ever attained this basic right. Not to award counsel fees in cases such as this would be tantamount to repealing the Act itself by frustrating its basic purpose. It is difficult for individual members of labor unions to stand up and fight those who are in charge. The latter have the treasury of the union at their command and the paid union counsel at their beck and call while the member is on his own. Congress passed the Act in an effort to offset the heavy hand of the union by giving the union member the aid of the federal courts. It is true that it did not specifically grant counsel fees, but it did authorize the courts to grant "such relief as may be appropriate." Counsel fees in cases of this kind are not only appropriate, they are imperative to preserve the Congressional purpose. An individual union member could not carry such a heavy financial burden. Without counsel fees the grant of federal jurisdiction is but a gesture for few union members could avail themselves of it. It is but equitable and fair that counsel fees in appropriate cases be awarded just as the union pays those of the officers and of itself in Section 102 litigation. As the Third Circuit said in *Artner* v. *Soloner*, *supra*:

> "In the context of the Labor Management Act it is untenable to assert that in establishing the bill of rights under the Act Congress intended to have those rights diminished by the unescapable fact that an aggrieved union member would be unable to finance litigation and would have no hope of remuneration even if he could some way or other proceed with his suit." At 355.

Appendix B

The union notes that Senator Goldwater and others opposed the bill because it failed to specifically permit the award of counsel fees. Leg. Hist. Vol. II, p. 1281, dissenting House Report p. 2492 (1959). The 3rd Circuit has a complete answer to this. 384 F. 2d at p. 351. As we see it, the supporters of the Bill thought that its language was so broad that it would give "a wide latitude to grant relief according to the necessities of the case," Id. Vol. II, p. 1584 (1960), to cover "any loss suffered by a member." Id. at p. 1632. This is sufficient for us to include the awarding of counsel fees here. It is quite often necessary to graft a judicial remedy to give legislation its intended fruition.

The union also argues that, considering the Act as a whole, we should conclude that Congress has "meticulously detailed the remedies available to a plaintiff" intending thereby to "mark the boundaries of the power to award relief." *Fleischmann Corp.* v. *Maier Brewing Co., supra,* at 719, 721. In particular, it notes, as we have indicated, that counsel fees *are* specifically provided for in other sections of the Act, 29 U.S.C. §§ 431(c), 501(b), thus suggesting that they were consciously omitted from this section. But this is a *non sequitur* here. These sections have to do with narrowly defined remedies such as the examination of books and records and an accounting. Here the relief necessary cannot be as easily foreseen nor broadly specified which accounts for the unlimited language of the Congress in § 102 i.e. "such relief as may be appropriate."

3. The union argues finally that, even if counsel fees may sometimes be recovered under Section 102(a)(2), it was an abuse of the district court's discretion here because appellee's services were furnished *gratis.* We need not consider this argument, since the record shows that, rather than the A.C.L.U. bearing any of the cost, Cole and his counsel bore the cost of the litigation themselves.

For these reasons, the judgment is

Affirmed

Appendix C

(Opinion and Order of District Court)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

This is an action for an injunction, compensatory damages and counsel fees.[1] This court granted a mandatory temporary injunction directing the defendant, Seafarers International Union of North America—Atlantic, Gulf, Lakes and Inland Waters District (hereinafter District) to restore to plaintiff all the rights and privileges of membership. [Order of John F. Dooling, Jr., D.J., dated May 27, 1964. The order was affirmed by the Court of Appeals for the Second Circuit, 339 F.2d 881 (2d Cir. 1965).]

Plaintiff asserts claims under Sections 101(a)(2) and 609 of the Labor Management Reporting and Disclosure Act of 1959 (hereinafter Act) [29 U.S.C. §§ 411(a)(2) and 529].[2]

---

[1] The court, by order dated April 15, 1964, struck the claim for punitive damages and attorneys' fees. (The trial court, however, restored the claim and the issues arising out of the expulsion by the plaintiff from the defendant Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District.) The said order granted leave to serve an amended complaint. Thereafter, by order dated July 14, 1964, the second claim stated in the complaint against the defendant Paul Hall was stricken.

[2] U.S.C. § 411(a)(2).

Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's

Appendix C

The plaintiff, in early 1948, was Executive Vice President of the United Financial Employees. He sought the help of defendant Paul Hall (who was then Secretary-Treasurer of the District) in organizing employees working in the Wall Street area in the exchanges and brokerage houses. Plaintiff's efforts proved unsuccessful and he again sought Paul Hall's help in obtaining employment. Defendant responded by placing the plaintiff on the union payroll as an office employee. Thereafter, defendant Paul Hall was instrumental in obtaining employment for plaintiff on a sand barge in New York Harbor. Plaintiff became a member of the defendant District in 1949. The plaintiff came to the defendant Paul Hall on other occasions in seeking employment at sea and on shore.

On August 24, 1954, the plaintiff decided to enter union politics and asked the defendant Paul Hall to put him on the latter's slate for office. Not receiving a favorable response, the plaintiff, at a later date, decided to challenge the defendant, Paul Hall, for office. Plaintiff thereafter criticized the union and its officers in the manner in which union funds were handled.

Plaintiff decided to make his bid for membership backing at a regular meeting of the District held on August

---

established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. § 529.

Prohibition on certain discipline by labor organization.—It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the endorsement of this section.

6, 1962. He prepared a list of preambles and resolutions. The Chairman of the meeting, a brother of the defendant Paul Hall, recognized the plaintiff when he asked for the floor and plaintiff thereupon started to read the preambles and proposals. The chair interrupted the plaintiff and directed an officer of the union to read the preambles and resolutions. The preambles generally particularized grievances concerning rules and practices in hiring while the resolutions were offered as amendments to "shipping rules" which concerned working conditions. They included, among other proposals, the elimination of the practice of preferring members for jobs who have served as pickets, fairness of posting of available jobs, the manner of distributing jobs and uniformity of shipping rules and strict observance of shipping rules. In the discussion that followed the reading of the preamble and resolutions, the defendant Hall spoke in opposition and briefly alluded to past favors of which the plaintiff was beneficiary and described the plaintiff as an ingrate. The chair refused the plaintiff the floor while the preambles and resolutions were before the membership.

After defendant Paul Hall spoke, the matter was taken to a vote and only the plaintiff and another member voted in support of the preambles and resolutions offered.

A charge was filed against the plaintiff claiming a violation of Article XVI, Section 2, Paragraph (h) of the District's Constitution.[3] The charges were thereupon presented to the membership meeting of the District on September 4, 1962. On September 5, 1962, the defendant District served a copy of the charges by registered mail and affixed a notice of the time and place for the holding

[3] Article XVI, Section 2, Paragraph (h) recites the following:

Deliberate and unauthorized interference, or deliberate and malicious vilification, with regard to the execution of the duties of any office or job.

of a hearing on the charges and notice of a special meeting called to elect a Trial Committee as provided by the District's Constitution.

The Trial Committee found that the plaintiff's statement, read at the meeting of August 6, 1962, was "a deliberate and malicious vilification, with regard to the execution of the duties of any office or job" and, therefore, a violation of Article XVI, Section 2, Paragraph (h) of the Constitution. The Trial Committee thereupon recommended the expulsion of the plaintiff from membership in the District.

Thereafter, the Trial Committee's recommendations were accepted at regular meetings of the membership held at the various ports; the expulsion became effective upon acceptance by the membership and plaintiff was so notified on November 26, 1962. Plaintiff was reinstated pursuant to the temporary injunction order issued by Judge Dooling on May 27, 1964.

The plaintiff raises a serious question in challenging the procedure employed by the defendant District in the manner of choosing and the composition of the Trial Committee as a violation of his right to procedural due process. Since the court finds that the expulsion violated the plaintiff's right of free speech under Section 101(a)(2) of the Act [29 U.S.C. § 411(a)(2)], the court finds the issue moot.

The charges and accusation made by the plaintiff in the preambles and resolutions were made at a regular meeting of the defendant District and only members of the District were present.

Plaintiff's Expulsion From the Defendant District Union

Section 101(a)(2) of the Act [29 U.S.C. § 411(a)(2)] was designed to promote the "full and active participation by the rank and file in the affairs of the union", *American*

Appendix C

Fed'n of Musicians v. *Wittstein*, 379 U.S. 171, 182-83, 85 S.Ct. 300, 307 (1967); *Navarro* v. *Gannon*, 385 F.2d 512 (2d Cir. 1967), and to protect democratic, participatory rights in union affairs. Atleson, *A Union's Member's Right of Free Speech and Assembly: Institutional Interests and Individual Rights*, 51 Minn. L. Rev. 403, 404 (1967). The "Bill of Rights of Members of Labor Organizations" section was enacted by Congress without the benefit of extensive committee consideration; rather it was the product of an amendment arising from debate on the floor. Such circumstance has caused one court to note:

> The Bill of Rights (Title I) of the LMRDA did not enjoy an orderly genesis. Consequently, the statutory language and the legislative history are a source of confusion as well as enlightenment. The courts, therefore, have substantially shaped the Bill of Rights into a guarantee of union democracy with the right of free speech enjoying a particularly favored position.

International Ass'n of Machinists Lodge No. 2 v. *Nix*, 415 F.2d 212, 217 (5th Cir. 1969). Hence the purpose of including such guarantees in the Act was to "protect the rights of union members to discuss freely and criticize the management of their unions and the conduct of their officers." *Salzhandler* v. *Caputo*, 316 F.2d 445, 448-49 (2d Cir.), *cert. denied*, 375 U.S. 943, 84 S.Ct. 344 (1963). The Congressional intent was to remove from union officials the ability "to silence criticism and punish those who dare to complain" through the use of their disciplinary power. *Id.* at 449. *See also International Ass'n of Machinists Lodge No. 2* v. *Nix, supra; Archibald* v. *International Union of Opearting Eng'rs*, 276 F. Supp. 326 (D. R.I. 1967); and *Graham* v. *Soloner*, 220 F. Supp. 711 (E.D. Pa. 1963). These protections have been characterized as the

checks and balances which help to assure and preserve union democracy. *Gartner* v. *Soloner*, 220 F. Supp. 115, 118 (E.D. Pa. 1963).

The rights which have been guaranteed to union members under the Bill of Rights are not without limitation. Section 411(a)(2) contains what is commonly referred to as the "proviso", which limits the exercise of a member's right in two instances. The proviso permits a labor organization (1) to "adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution, and (2) to require "refraining from conduct that would interfere with its [the union's] performance of its legal or contractual obligations." It is under the first exception that the defendant union alleges its discipline is proper. Inquiry must therefore be made as to what conduct is within the general protection of the Act and, also, as to what discipline is permissible within the proviso.

Section 101(a)(2) of the Act guarantees to union members the right

> to express any views, arguments, or opinion; and to express at meetings of the labor organization his views . . . upon any business properly before the meeting . . .

This right is circumscribed only by the member's obligation (1) "toward the organization as an institution"; and (2) not to interfere with the union's performance "of its legal or contractal obligations."

The defendant claims that the plaintiff violated the reasonable rules adopted by the defendant District to enforce the obligation of the plaintiff to the defendant District as an institution. Speech does not fall outside the protected area because it constitutes malicious vilification. *Cole* v.

Hall, 339 F.2d 881 (2d Cir. 1965),[4] nor because the speech is false and libelous. *Salzhandler* v. *Caputo, supra; Giordani* v. *Upholsterers International Union of North America*, 403 F.2d 85 (2d Cir. 1968).

It may be that attacks such as those made here by the plaintiff of favoritism, mishandling of funds, "job raiding", and the like may have embarrassed the defendant union and its officers; it may be, as the union contends, that the plaintiff's underlying union philosophy would result in a decrease in the number of union jobs available, would reduce both the union membership and the treasury, however, the "proviso" in the statute did not intend to discourage criticism merely because the ultimate result would not benefit the union.

In *Giordani* v. *Upholsterers International Union of North America, supra*, plaintiff charged the union and its officers with misusing welfare and compensation funds and circulated a letter to the union membership and public officials, including senators and congressmen. The defendant union contended that the letters were not protected under the statute since they ". . . tended to undermine the U.I.U. as an institution and therefore was subject to discipline under the proviso" (at page 89). The court rejected the claim saying:

> We made it clear in *Salzhandler* that one of the primary purposes of the Act was to curtail such vices as the mismanagement of union funds, and that the protection of union members' right to discussion on this subject is an important safeguard to that end. If unions could discipline such speech on the ground that it weakened their power as an institution, this safeguard would be rendered entirely ephemeral and ineffectual.

---

[4] Affirming Judge Dooling's order in the instant case.

403 F.2d at 89-90. Similarly, in *Farowitz* v. *Associated Musicians of Greater New York*, 330 F.2d 999 (2nd Cir. 1964), plaintiff member distributed leaflets urging members not to pay a tax imposed by the union on the ground that the tax was unlawful. Defendant expelled the plaintiff from membership charging that plaintiff thereby had sought "to undermine the very existence of the Local." The court stated that Farowitz reasonably believed that the tax was illegal and held (at page 1002):

> We do not say that there may not be some situation in which a union member would not be protected against disciplinary measures if he were to urge other members to forego paying their dues. All we decide is that a member having such good reasons as here to believe that the collection of taxes or dues runs afoul of the law has the right to call this to the attention of the membership and to urge that they refrain from paying such assessments.
>
> Thus it is clear here, as in *Salzhandler*, the elements of the proviso to § 101(a)(2) are not satisfied. A rule which subjects a member to expulsion for complaining of a tax which he reasonably believes to be illegal is not a reasonable rule.

The only cases which have limited the right to free speech under the first proviso are those which seek to enforce reasonable rules in the conduct of union meetings. v. *Watson*, 338 F.2d 678 (7th Cir. 1964), *cert. denied*, 380 U.S. 963, 85 S.Ct. 1107 (1965). *See, also, Navarro* v. *Gannon*, 385 F.2d 512 (2d Cir. 1967). Other instances will surely be found like the hypothetical claim in *Farowitz*, *supra*, where speech might place the union in jeopardy where a member urges others not to pay dues and other cases might be cited where the effectiveness of the

union is placed in jeopardy. Where a member, however, presents charges in an orderly fashion at a regular union meeting, such speech falls clearly within the protected area. It is certainly within the limits defined by *Salzhandler* and *Giordani*.

The disciplinary action taken by the union violated the statute and the temporary injunction directing that the plaintiff be restored to all the rights and privileges of membership must be terminated.

Plaintiff suffered no loss of wages as a result of his expulsion from the union. During the period of his expulsion, his right to bid for jobs remained unimpaired. Upon being reinstated and in accordance with the temporary injunction order, he paid the defendant District back dues in the sum of $280.00. Though he was deprived of his right to attend meetings, and run for union office, he retained the other benefits of union membership, i.e., insurance and welfare rights. *Cf. International Bhd. of Boilermakers* v. *Braswell*, 388 F.2d 193 (5th Cir. 1968). The back dues are, therefore, not a loss.

The record is barren of any proof on which the court might make a determination of the value of the right to attend meetings and run for union office.

Compensatory damages are recoverable for any loss or injury which "directly or proximately resulted from the alleged violation of the [Act]." *McGraw* v. *United Ass'n of Journeymen & Apprentices of Plumbing*, 341 F.2d 705, 710 (6th Cir. 1965). *Cf. Ryan* v. *International Bhd. of Elec. Workers*, 387 F.2d 778 (7th Cir. 1967); *Archibald* v. *Engineers Local 57*, 276 F. Supp. 326 (D.R.I. 1967); and *Magelssen* v. *Plasters' Local 518*, 240 F. Supp. 259 (W.D.Mo. 1965).

The plaintiff has failed to prove any other items of compensatory damages, *i.e.*, injury to reputation and accompanying emotional strain. See *Simmons* v. *Arisco, Local 713, Textile Workers Union of America*, 350 F.2d

1012 (4th Cir. 1965); and *International Bhd. of Boilermakers* v. *Rafferty*, 346 F.2d 307 (9th Cir. 1965).

PUNITIVE DAMAGES

The court finds that the defendants, in good faith, believed that they had a right to charge and discipline the plaintiff for his actions at the meeting of August 6, 1962. Absent a showing of malice, punitive damages are not recoverable. *International Bhd. of Boilermakers* v. *Braswell*, 388 F.2d 193 (5th Cir. 1968); *Farowitz* v. *Associated Musicians of Greater N. Y.*, 241 F. Supp. 895 (S.D.N.Y. 1965).

COUNSEL FEES

At this writing, the Circuit Court of this circuit has not passed on the propriety of the award of counsel fees in an action under the Act, Section 102 of the Act (29 U.S.C. § 412) is silent on the question. The failure to make express provision is cited as a reason for refusing to make such an award.

Section 201 of the Act (29 U.S.C. § 431) and Section 501(b) of the Act [29 U.S.C. § 501(b)] [5] provide for the award of discretionary counsel fees. The district courts of this circuit are in disagreement. In *Vars* v. *International Bhd. of Boilermakers*, 215 F. Supp. 943 (D. Conn.), *aff'd on other grounds*, 320 F.2d 526 (2d Cir. 1963), the district court, citing the dissenting views of the House

[5] Section 201 of the Act provides for the discretionary award of counsel fees in an action in which a member seeks to examine books, records and accounts to verify annual financial reports.

Section 501(b) of the Act provides for a discretionary award of counsel fees where an action is brought by a member against a union official to recover damages or for an accounting for the benefit of a labor organization based on a claim that such union official is violating his duties.

Appendix C

Committee Report (the majority report made no reference to the award of counsel fees) denied counsel fees to the successful plaintiff. To the same effect, see *McGraw* v. *United Ass'n of Journeymen & Apprentices*, 216 F. Supp. 655, 664; *Leonard* v. *M.I.T. Employees' Union*, 225 F. Supp. 937 (D.Mass. 1964); *Magelssen* v *Plasters' Local 518*, 240 F. Supp. 259 (W.D. Mo. 1965); *Bailey* v. *Netter*, 266 F. Supp. 165 (E.D.La. 1967); *Jaques* v. *International Longshoremen's Ass'n*, 246 F. Supp. 857 (E.D.La. 1965).

This court is persuaded by *Gartner* v. *Soloner*, 384 F.2d 348 (3d Cir. 1967), which found authority for the award of counsel fees in a Section 102 action after reviewing the legislative history. As previously noted, the pertinent section was added to the Act as an amendment arising from the floor and was not subject to the usual intensive committee consideration. This action accounts, in part, for the absence of affirmative statements by members of the committee in favor of the award of counsel fees.

The court, in *Gartner*, at page 355, said:

> In the context of the Labor Management Act it is untenable to assert that in establishing the bill of rights under the Act, Congress intended to have those rights diminished by the unescapable fact that an aggrieved union member would be unable to finance litigation and would have no hope of remuneration even if he could some way or other proceed with his suit.

Gartner was followed in *Sands* v. *Abelli*, 290 F. Supp. 677 (S.D.N.Y. 1968).

The disparity in economic power would discourage members from contesting union action and attempting to right union wrongs It is essential to the vindication of the rights granted by the statute that an award of counsel

fees be made to successful plaintiffs. The court does not express any view as to the recoverability of counsel fees where the action is brought in good faith but plaintiff is unsuccessful.

The court should not be denied the power to award counsel fees in a case such as this because of the absence of express provision. *Mills* v. *Electric Auto-Lite Company*, 396 U.S. 375, 90 S. Ct. 616 (1970).

The court directs the attorney for the plaintiff and the attorney for the defendants to file affidavits on the issue of reasonable counsel fees due the plaintiff prior to the date of the settlement of judgment as hereinafter provided. If the issue cannot be resolved by affidavits, the court will direct an evidentiary hearing.

The plaintiff is entitled to a judgment awarding him a permanent injunction restoring him to membership in the defendant District and a sum to be fixed as award for reasonable counsel fees for the institution and prosecution of this law suit, which said sum shall be paid directly to his attorney, Burton Hall, Esq.

Settle judgment on not less than five (5) days' notice to be served personally or by mail.

JACOB MISHLER
U. S. D. J.

Appendix D

(Decision and Order of District Court)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

The issue of reasonable value of the counsel fee awarded to plaintiff's counsel has been stipulated by the parties to be $5,500. Judgment to be settled on five days' notice to be served either personally or by mail in accordance with the findings of fact and conclusions of law made and dated May 21, 1971, on or before September 1, 1971.

So ordered.

JACOB MISHLER
U. S. D. J.

Appendix E

(Findings of Fact and Conclusions of Law of District Court)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

May 21, 1971

The above case having come on for trial to the court, without a jury, I make the following Findings of Fact and Conclusions of Law:

1. The court has jurisdiction of the subject matter of this action brought pursuant to Sections 102 and 609 of the Labor Management Reporting and Disclosure Act of 1959 (29 U.S.C. §§ 412 and 529) (hereinafter LMRDA); 28 U.S.C. § 1331.

2. The defendant Seafarers International Union of North America—Atlantic, Gulf, Lakes and Inland Waters District (hereinafter District) is and has been at all times herein relevant a "labor organization" within the definition set forth in LMRDA § 3(i), 29 U.S.C. § 402(i), whose principal office is at 675 Fourth Avenue, Brooklyn, New York, within the territorial jurisdiction of this court.

3. The defendant District is and at all times relevant has been affiliated with the Seafarers International Union of North America (hereinafter International), which International is a labor organization within the meaning of LMRDA § 3(i), 29 U.S.C. § 402(i).

Appendix E

4. (a) The defendant Paul Hall was at all the times relevant and since 1960, President of the District and, prior to 1960, served as Secretary-Treasurer of the District.

(b) The defendant Paul Hall was at all the times relevant and since 1959, President of the International and, prior thereto, served as Secretary-Treasurer of the International.

(c) The office of President is the Chief Executive office in both the District and the International.

5. (a) The defendant Cal Tanner was at all times relevant Executive Vice President.

(b) The defendant Earl Shepard was at all times relevant Vice President in charge of the Atlantic Coast.

(c) The defendant Al Kerr was at all times relevant a Secretary-Treasurer of the District.

6. (a) In 1946, plaintiff was Executive Vice President of the United Financial Employees, a financial union representing employees of the various stock exchanges and some brokerage houses in and around the Wall Street area.

(b) During that year, while Executive Vice President of United Financial Employees, the plaintiff became associated with the District;

(c) During the association, the District aided United Financial Employees in its union activities.

7. (a) United Financial Employees was ineffective and became insolvent and in 1948 plaintiff was unemployed.

(b) Plaintiff sought the help of the defendant Paul Hall.

(c) The defendant Paul Hall employed the plaintiff as a District employee until December 13, 1948.

(d) On December 13, 1948, through the efforts of defendant District, plaintiff was employed by the Maritime

Allied Workers in the Port of New York. Plaintiff was employed as a seaman on a sand barge, which was a favored type of employment since the seaman was able to remain in the Port of New York.

(e) In mid-1948, plaintiff became a member of the District and the International and he received his union card in mid-1949.

(f) Plaintiff continued his employment on the sand barge until May, 1951, when it terminated because the barge sank, at which time plaintiff registered and shipped out as a regular seaman.

(g) Between June, 1951 and August 13, 1951, plaintiff shipped out on the Bull Line on a vessel that plied between New York and Puerto Rico.

(h) Plaintiff's wife fell ill and plaintiff sought defendant Paul Hall's help in again obtaining work which would afford him the opportunity of remaining ashore. Defendant Paul Hall employed the plaintiff as an employee of the Union from August 14, 1951 to March, 1954.

(i) During the period 1954 to 1958, plaintiff was employed on Seatrain vessels which touched coast ports between New York and Texas. Plaintiff chose this type of employment because it afforded him the opportunity to keep in close communication with New York and to make frequent visits to New York during the trips.

(j) Plaintiff was employed aboard the vessel as a wiper. This classification is lowest in salary aboard the vessel.

8. (a) In or about 1955, the Seafarers Welfare Plan set up a scholarship for children of seafarers.

(b) Plaintiff's daughter was awarded a four year scholarship at $1,500.00 per year in 1955.

(c) Plaintiff's daughter entered the University of Connecticut.

(d) The scholarship was revoked because the plaintiff's daughter failed to maintain a B average in accordance with the conditions of the grant.

9. (a) On February 21, 1958, plaintiff wrote a letter to Robert T. Creesy, Fund Administrator, charging him with mismanagement.

(b) On the same day, February 21, 1958, plaintiff wrote a letter to the editor of Seafarers Log, the District's publication, criticizing union policies and the practices of union officials, i.e., that the union entered into "sweetheart contracts" and complaining of the grievance procedures.

10. On January 21, 1959, plaintiff wrote a letter to defendant Hall wherein he explained that the motivation for the complaints set forth in paragraph "9" was his resentment over the revocation of his daughter's scholarship.

11. For some time, beginning in about 1940, defendant District (whose predecessor was affiliated with the A.F. of L. before the merger with the C.I.O.) and the National Maritime Union (hereinafter NMU) (affiliated with the C.I.O. before the merger) competed for membership among the unlicensed seamen.

12. (a) It was and is the custom and practice in the shipping industry that the employer, i.e., the ship owner or operator, enters into a contract with the union to supply seamen to man the ships.

(b) In 1957, Moore-McCormack Lines purchased eight ships from Seas Shipping Corp., which operated the ships under the name Robin Lines. The District was in contractual relationship with Seas Shipping Corp. NMU was in contractual relationship with Moore-McCormack Lines. The dispute was submitted to the National Labor Relations Board, which ruled that each of the vessels was

to be a separate bargaining unit and directed that elections be held on each ship.

13. (a) During the late 1940's, the Marine Engineers Beneficial Association (hereinafter MEBA) represented certain engineers on Isbrandtsen and Isthmian ships.

(b) At that time, a contract dispute arose between MEBA and the two aforementioned companies as a result of which MEBA members went out on strike.

(c) In response to a request by these companies for assistance in settling labor troubles, the defendant District helped form the Brotherhood of Marine Engineers (hereinafter BME).

(d) BME men crossed the MEBA picket lines thereby breaking the MEBA strike.

14. In 1959, BME became a District of the MEBA.

15. (a) Prior to 1962, Isbrandtsen acquired a controlling interest in the American Export Lines.

(b) During 1962, both companies announced plans to merge the Isbrandtsen ships with the American Export fleet.

(c) The Isbrandtsen ships were under contract to MEBA whereas the Export vessels were under contract to the Brotherhood of Marine Officers (hereinafter BMO).

(d) MEBA opposed this action on the ground that it was being taken for the sole purpose of forcing MEBA out and bringing in the BMO.

(e) BMO contracts were more favorable to the shipping company.

(f) BMO was originally a company union and until 1960 was affiliated with District 50 of the United Mine Workers. In 1961, BMO terminated its former affiliation and joined with the NMU.

Appendix E

16. (a) On August 6, 1962, at a regular meeting of the membership, the plaintiff presented a set of preambles and proposed resolutions on shipping rules.

(b) After the plaintiff had read a portion of the preambles, the Chairman, William Hall, brother of the defendant Paul Hall, interrupted the plaintiff and ruled that the plaintiff was out of order and directed that he sit down. The Chairman thereupon continued with other business before the meeting.

(c) The defendant Paul Hall arose and stated that plaintiff had a right to speak and requested that the membership be allowed to hear the proposed preambles and resolutions. Thereupon the Chairman directed that the proposed preambles and resolutions be read by the reading clerk, one Patrolman Campbell.

(d) Defendant Paul Hall arose in opposition to the preambles and characterized the plaintiff as an ingrate and thereupon declared that the plaintiff had violated the union rules in the past and that the plaintiff should have been charged with violations a long time ago.

(e) Plaintiff had written out twelve preamble clauses which read as follows:

> WHEREAS, the Seafarers' Log of January, 1962, glibly promised to give the membership a full printing of our revised shipping rules, then left the matter hanging high in the air without so much as an explanation for failure to follow through, we detect another characteristic trick of Paul Hall's type of democracy meant to con a guillible public into believing we are a well informed rank-and-file, while in reality we function in groping ignorance;
>
> WHEREAS, the only working set of shipping rules made available to us are those contained in the SIU Handbook dating back to February 15, 1960, which

includes only eleven of the at least 58 articles now amassed, the unpublished improvisations apparently are not for general distribution;

WHEREAS, the amendment of November 1, 1961, known as Action 58a, stating that "within each class in entry-ratings of deck, engine, and steward departments preference in shipping shall be given those men who are endorsed as lifeboatmen", is posted on the patrolmen's cage at Headquarters, and while its general terms refer to Unionwide enforcement, yet it is applied solely and therefore discriminatorily to the already much put on Port of New York members;

WHEREAS, seniority rules enacted under the guise of exercising port autonomy, but in conflict with the letter and spirit of our contracts—like those requirements of lifeboatman ticket and Pete Larsen Clinic card, which are mandatory in only certain ports, yet regarded so lightly in others as even to be ignored—cannot be permitted to hide behind the Seafarers Appeals Board for enforcement of them since they violate the time-tested code of a Unionwide equal treatment rotary hiring list, and must thereby be considered arbitrary, capricious, and unlawful rules.

WHEREAS, such a system of super-seniority additionally based on special services rendered officials is a further invasion of our Union contracts since that too tampers with the regular rotation of our legally-bound shipping list, so let's face it, any jobs withheld as rewards for those performing such voluntary duties can only be deemed as backdoor shipping;

Appendix E

WHEREAS, shipping cards of volunteer workers are held by the Union while they are away from the hiring hall, implying that the absentees will be looked out for during shipping calls despite prescribed rules which require that (1) a seaman must be present in person when a job is offered him and (2) in no case shall a job be called out unless it is first posted on the shipping board, so an end must be made of this practice if we are to preserve our American principle of first come first served;

WHEREAS, machine policy deliberately creates a constant state of agitated ferment so their contrived emergencies can be utilized to by-pass general rules and individual rights in their never-ending sanctimonious crusades to save the Union, consequently curbs on the Union's over-reaching demands have to be devised;

WHEREAS, moral arguments fabricated to justify SIU's interference in interunion beefs are both contradictory and phony—a classic example being our current picketing of American Export ships because the Company proposes to man its Isbrandtsen vessels with licensed members of the Brotherhood of Marine Officers—we have simply to jog our memories slightly to recall that Paul Hall stole those same engineers jobs from MEBA in 1951, when he set BME up as a dual organization;

WHEREAS, raiding a duly certified bargaining agent's contractual jurisdiction was also the cause of Moormac's recent tie-ups, the pattern for such organizational hijacking was instituted on the Lakes more than a year ago when Paul Hall effectively argued that Lachlan Macleay's transfer to Gulf Canal Line justified SIU in undercutting NMU's

daily wage rate from $28.46 to $17.50, and its manning scale from 11 men to 7 in order to gain representational power, and by his timely intervention in another NMU labor management relationship, where Mississippi Barge Line of St. Louis was replaced by a dummy corporation, Inland Towers of Davenport (La.), the change of unions in this raid was allowed to be excused on the grounds of a similar wage slash plus reduction of the crew of the Valley from 17 to 11 men;

WHEREAS, leadership double talking and double-crossing has only led the expected retaliatory attrition, it should be a mere matter of time before Paul Hall's own logic catches up with our Bull, Bloomfield, Robin, and Isthmian jobs, either from being swallowed up by NMU's leviathan like companies or the not too-impossible swing-over of SIU crews to NMU in labor board elections because of our Union's company minded policies of lone-wolf wage freezes, crew-cutting automation clauses, and belly-jobbing food plans, hardly forgetting those oppressive Union fees which further single us Seafarers out as the prime patsies in the maritime labor picture.

WHEREAS, the same motivation which causes Union officers to keep us in the dark about essential truths concerning our job security which is daily being gambled with in the power play for higher stakes; has also withdrawn our shipping rules from us, so that by the administration's over-subtle interpretation of our hiring process the membership may be trapped into cooperating in their own deception and exploitation;

Appendix E

WHEREAS, dog-eat-dog warfare has resulted in many infringements on our shipping rights, more airtight safeguards must be enacted to protect us against further betrayals by publicity-seeking officials;

17. Plaintiff proposed four resolutions as follows:

THEREFORE, BE IT RESOLVED, that the practice of collecting shipping cards from those going on picket duty, or serving in other voluntary ways, be discontinued in order to end persistent suspicions and harmful rumors, and that strict adherence be observed in the rules which require ALL jobs to be posted on the shipping board, and every one of them to be competed for in person.

NEXT BE IT RESOLVED, that all open jobs up for grabs by C-card men be dispatched in the hiring hall, where the membership can witness for itself the honesty of the hiring process, immediately following the final daily call;

FURTHER, BE IT RESOLVED, as an additional check on the purity of the procedure, a dispatcher's list of hourly job calls of the day before, countersigned by the Port Agent, be posted daily on the bulletin board complete with the name and registration number of the job's original taker, as well as those of the eventual shippers whenever such jobs have been turned back, and;

FINALLY, BE IT RESOLVED, that shipping rules be uniform throughout the Union, and equally binding on all ports, and that a comprehensive compilation of the rules be made readily available to all members as the one accurate guide to Seafarers under our hiring hall system.

Appendix E

18. (a) Plaintiff's resolutions were put to a vote after defendant Paul Hall spoke as set forth in finding number "16(d)".

(b) Plaintiff's resolutions were defeated with all members present voting "against" and only plaintiff and the member who had seconded the resolutions voting "in favor."

19. On or about September 4, 1962, Joseph DiGiorgio, Port Agent of the Port of New York and a member of the defendant District, filed a "Charge Sheet" against the plaintiff, which sheet charged plaintiff as follows:

> 1) Violation of Article XVI, Section 2, Paragraph (h) of the Constitution. Deliberate and unauthorized interference, or deliberate and malicious vilification with regard to the execution of the duties of any office or job; In that, on August 6, 1962 Headquarters Meeting, John Cole deliberately and maliciously charged the Officers and Union in the following:
>
> a) Raiding a duly certified bargaining agent on contractual jurisdiction.
>
> b) Moral arguments fabricated to justify SIU's interference in inter-union's beefs are both contradictory and phony.
>
> c) Charged an Officer of this Union with the stealing of jobs from another union.

20. The first charge against the plaintiff denoted "a" was based upon the recitals contained in the ninth "Whereas" clause of the plaintiff's resolution set forth in finding "16".

21. The second and third charges against the plaintiff denoted "b" and "c" respectively were based upon recitals

contained in the eighth "Whereas" clause of the plaintiff's resolution set forth in finding "16".

22. (a) These charges were presented to the membership at a meeting at the Port of New York on September 4, 1962 and were accepted by a majority vote.

(b) On September 5, 1962, the plaintiff was duly notified and on September 6, 1962 received notification that charges had been filed against him and that he was to appear on October, 9, 1962, at which time a Trial Committee would be elected at a Special Meeting to be held for that purpose in accordance with the provisions of the District Constitution.

23. (a) On October 8, 1962, the plaintiff left the ship upon which he was employed in Texas City and flew to New York to attend his trial.

(b) On October 9, 1962, the Trial Committee was duly elected at a membership meeting in accordance with the District Constitution.

(c) That all the members of the Trial Committee were members of the defendant District who had voted to accept the charges made by Mr. DiGiorgio at the meeting of September 4, 1962.

(d) Shortly thereafter, the Trial Committee convened with the plaintiff present.

(e) The plaintiff and Mr. DiGiorgio remained outside the hearing room while the Vice President, Mr. Shepard, went into the room with the Trial Committee.

(f) Plaintiff requested and was denied the opportunity to have either an electronic recording or a manual recording of the proceedings.

(g) Mr. Adelbert Arnold, a member of the Trial Committee, was designated to make notes of the proceeding.

He did not make a verbatim recording but brief notes in longhand.

(h) The plaintiff was permitted to present a written defense to the charges which he had prepared wherein he admitted that he had made the statements but denied that they constituted a malicious vilification.

(i) The Committee's recommendation disclosed no evidence upon which a finding of malicious vilification could be sustained.

The Committee disclosed no evidence to support a finding that the plaintiff's conduct at the meeting of August 6, 1962 was violative of Article XVI, Section 2, Paragraph (h) of the Constitution.

24. The plaintiff pursued the appellate procedure provided in Article XV of the Union Constitution and the finding of the Trial Committee was affirmed.

25. Plaintiff mistakenly appealed to defendant Paul Hall in his capacity as International President on February 1, 1963, and defendant Paul Hall replied by letter dated February 7, 1963 that appeal to him was improper and thereupon advised the plaintiff that his expulsion would not affect his right to "ship out" through the union hiring hall.

26. (a) Plaintiff instituted suit on December 10, 1963, by filing a complaint in the office of the Clerk of this Court.

(b) On May 27, 1964, plaintiff was restored to membership by order of John F. Dooling, Jr., U.S.D.J., granting plaintiff's application for temporary injunction, and has continued to be a member to the present time.

27. Since the plaintiff left the employ of the union to ship out on the Mississippi Company vessel, the Lawrence

Victory, on March 23, 1954, the plaintiff's employment record is as follows:

(a) From March 23, 1954 to May 20, 1954, the plaintiff was employed on the Mississippi Company vessel, the Lawrence Victory;

(b) From May 21, 1954, to May 25, 1954, the plaintiff was unemployed;

(c) From May 26, 1954 to May 31, 1954, the plaintiff was employed aboard the Penn Transportation Company vessel the William Courage;

(d) From June 1, 1954 to June 9, 1954, the plaintiff was not employed;

(e) From June 10, 1954 to September 17, 1955, the plaintiff was employed aboard the Seatrain New York;

(f) The plaintiff left the employment referred to in Finding 27(e) above as a result of an injury sustained while aboard the vessel. As a result of this injury, plaintiff was unfit for duty;

(g) From January 13, 1956 to June 3, 1956, the plaintiff was employed aboard a Waterman vessel;

(h) From June 4, 1956 to June 15, 1956, the plaintiff was not employed;

(i) From June 16, 1956 to April 4, 1958, the plaintiff was employed aboard the Seatrain New York;

(j) From April 5, 1958 to June 30, 1958, the plaintiff was not employed;

(k) From July 1, 1958 to October 7, 1959, the plaintiff was employed aboard the Seatrain New York;

(l) From October 8, 1959 to December 10, 1959, the plaintiff was not employed;

(m) From December 11, 1959 to June 8, 1962, the plaintiff was employed aboard the Seatrain Georgia;

(n) From June 9, 1962 to August 28, 1962, the plaintiff was not employed;

(o) From August 29, 1962 to October 8, 1962, the plaintiff was employed on board the Seatrain Texas;

(p) On October 8, 1962, the plaintiff left the Seatrain Texas in Texas City, Texas to return to New York to be present at his trial and subsequent appeals;

(q) From February 13, 1963 to May 13, 1963, the plaintiff was employed aboard the SS Vivian;

(r) From May 14, 1963 to July 18, 1963, the plaintiff was not employed;

(s) From July 19, 1963 to January 11, 1965, the plaintiff was employed aboard the Seatrain Texas;

(t) From January 12, 1965 to February 15, 1965, the plaintiff was not employed;

(u) From February 16, 1965 to June 2, 1966, the plaintiff was employed aboard the Seatrain Texas;

(v) From June 3, 1966 to October 3, 1966, the plaintiff was not employed;

(w) From October 4, 1966 to December 15, 1966, the plaintiff was employed on the Seatrain Georgia;

(x) From December 16, 1966 to March 17, 1967, the plaintiff was not employed;

(y) From March 18, 1967 through May, 1967, the plaintiff was employed aboard the Sealand Summit. In May, 1967, the plaintiff was injured while working on the Summit;

(z) Soon after plaintiff was injured aboard the Summit, the plaintiff retired and is currently receiving a union pension.

28. During the periods of unemployment listed in findings numbered 27(r), (v) and (x), the plaintiff admits that there were wipers jobs put up for bid in the hiring hall but plaintiff declined to bid for the jobs because they were not aboard coastwise vessels.

29. During the periods of unemployment, the plaintiff applied for and received unemployment insurance.

30. Throughout the periods of unemployment in question, the plaintiff restricted the jobs available to him through the plaintiff's own preference for coastwise vessels.

31. Plaintiff failed to prove any loss of income by reason of his expulsion.

32. (a) Plaintiff failed to prove that his expulsion from the defendant District was motivated by malice on the part of any of the defendants;

(b) Plaintiff has failed to prove that defendant Paul Hall initiated, accused or conspired with others to bring about the expulsion of the plaintiff from the defendant District except to the extent that defendant Paul Hall exercised his right to debate and vote on the issues.

33. Plaintiff has failed to sustain the burden of proof against the defendant Paul Hall, individually and as President, the defendant Al Kerr, individually and as Secretary-Treasurer, the defendant Earl Shepard, individually and as Vice President, the defendant Cal Tanner, individually and as Executive Vice President of the defendant District.

34. The complaints, grievances and accusations were, in part, motivated by plaintiff's political ambitions for union office.

Conclusions of Law

1. The court has jurisdiction of the defendant labor organization and of the subject matter of the action pur-

suant to 29 U.S.C. Sections 402(i), 412, 525 and 28 U.S.C. Section 1331.

2. The plaintiff is entitled to judgment for a mandatory permanent injunction directing that he be reinstated to membership and restored to all the financial benefits accruing to members and for a judgment for reasonable counsel fees for services rendered in his behalf by Burton Hall, Esq.

3. Defendants Paul Hall, Al Kerr, Earl Shepard and Cal Tanner are entitled to judgment dismissing the complaint.

4. The court directs that judgment shall be entered after proof of reasonable value of the services performed by Burton Hall shall have been submitted in accordance with the memorandum of decision filed herewith.

Dated: Brooklyn, New York,
May 21, 1971.

JACOB MISHLER
U. S. D. J.

Appendix F

(Amended Findings of Fact and Conclusions of Law of District Court)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendants having moved to amend the findings of fact made and filed in the above matter on May 21, 1971, the said findings of fact are hereby amended as follows:

1. Finding 12(a) is amended to read as follows:

12. (a) It was and is the custom and practice in the shipping industry that the employer, i.e., the ship owner or operator, enters into a contract with the union to supply seamen to man the ships. [The union operates a hiring hall on a seniority basis in order to supply the men needed to man the ships under contract. By virtue of the contract, the employer makes contributions to funds maintained by the union for the benefit of its members to provide pension, welfare and vacation benefits.][1]

2. Finding 12(b) is amended to read as follows:

12. (b) In 1957, Moore-McCormack Lines purchased eight ships from Seas Shipping Corp., which operated the ships under the name Robin Lines. The District was in contractual relationship with Seas Shipping Corp. NMU was in contractual relationship with Moore-McCormack Lines. [A dispute arose as to which union would supply the crew for

---

[1] New material is set forth in brackets.

the Robin Line ships.] The dispute was submitted to the National Labor Relations Board, which ruled that each of the vessels was to be a separate bargaining unit and directed that elections be held on each ship.

3. Finding 12(c) is to be added following 12(b):

[12. (c) In 1962, the dispute again arose as a result of an NMU petition to the NLRB to have all the Robin Line ships become a part of the same bargaining unit. The District, in turn, filed raiding charges with the AFL-CIO and unfair labor practice charges with the NLRB. The District also began picketing Moore-McCormack vessels, which resulted in tieing up the Moore-McCormack fleet. Such picketing ceased upon the NLRB's dismissal of the NMU petition and the AFL-CIO's ruling in favor of the District.]

4. Finding 13.(b) is amended by deleting therefrom the words "At that time" and substituting therefore "in 1951", so that the same shall read as follows:

13.(b) In 1951, a contract dispute arose between MEBA and the two aforementioned companies as a result of which MEBA members went out on strike.

5. Finding 14. is amended by deleting therefrom the word "a" and inserting the numeral "2" after the word "District" so that the same shall read as follows:

14. In 1959, BME became District 2 of the MEBA.

6. Finding 15.(c) is amended by inserting the words "District 2 of the" before "MEBA" to read as follows:

15.(c) The Isbrandtsen ships were under contract to District 2 of the MEBA, whereas the Export

vessels were under contract to the Brotherhood of Marine Officers (hereinafter BMO).

7. Finding 15.(d) is amended by inserting the words "District 2 of the" before "MEBA" to read as follows:

> 15. (d) District 2 of the MEBA opposed this action on the ground that it was being taken for the sole purpose of forcing MEBA out and bringing in the BMO.

8. The court makes the following additional finding to follow finding 15. (f):

> 15. (g) District 2 of the MEBA picketed the Isbrandtsen vessels as a result of the proposed merger of Isbrandtsen into American Export, and was assisted by the District in its picketing.

In all other respects the motion to amend the Findings of Fact is hereby denied, and it is

SO ORDERED.

JACOB MISHLER
U. S. D. J.

Appendix G

(Order of Court of Appeals Denying Petition for Rehearing)

72—1003

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

—o—

JOHN COLE,

Plaintiff-Appellee,

v.

PAUL HALL, individually and as President or AL KERR, as Secretary Treasurer, or EARL SHEPARD, as Vice President, or CAL TANNER, as Executive Vice President of the Seafarers International Union of North America—Atlantic, Gulf, Lakes and Inland Waters District,

Defendants-Appellants.

—o—

A petition for a rehearing having been filed herein by counsel for the appellants,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

July 24, 1972

TOM C. CLARK
Associate Justice, Supreme Court

J. EDWARD LUMBARD
U. S. C. J.

HAROLD R. TYLER
U. S. D. J.